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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/518,219  | 12/16/2004  | David J. Alessio     | SP-1598.2 US        | 5728             |
| 20875   | 7590        | 04/17/2006           | EXAMINER            |                  |
| MICHAEL C. POPHAL<br>EVEREADY BATTERY COMPANY INC<br>25225 DETROIT ROAD<br>P O BOX 450777<br>WESTLAKE, OH 44145 |             |                      | LEE, GUNYOUNG T     |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 2875                |                  |
| DATE MAILED: 04/17/2006   |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding..

H/A

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/518,219             | ALESSIO, DAVID J.   |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Gunyoung T. Lee        | 2875                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12/16/2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

1. The claims must be given their broadest reasonable interpretation. See MPEP § 2111.

***Information Disclosure Statement***

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –  
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Brass et al. (US 6,979,104).

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5. Brass et al. disclose a light emitting diode (LED) lighting device (Fig. 8, 901).

6. In regards to claim 1, Brass et al. disclose:

- A housing (Fig. 8, 911, 920);
- A first and second light emitting diodes (Fig. 9, 904) located in the housing (911), wherein the second light emitting diode is spaced from the first light emitting diode;
- A first and second magnifier lenses (Fig. 9, 916) arranged in a light path of the first and second light emitting diodes (904) respectively for focusing a first (Fig. 18, A) and second (B) light beams onto a target area (col. 4, lines 24-27);
- A support member (Fig. 10, 913, 930) for supporting the first and second magnifier lenses (906) relative to the first and second light emitting diodes (904), respectively.

7. In regards to claims 2-9, Brass et al. further disclose:

- Wherein the support member (Fig. 8, 913) comprises a non-reflective inner wall (col. 3, lines 55-57) (claim 2);
- Wherein the support member (Fig. 8, 913, 930) comprises a cover (913) of the housing (911) (claim 3);
- Wherein the cover (Fig. 8, 913) comprise a substantially transparent material (col. 3, lines 55-57) (claim 4);
- Wherein the first and second magnifier lenses (Fig. 9, 916) each comprise a convex magnifier lens (claim 5);

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- Wherein the first and second magnifier lenses (Fig. 9, 916) each comprise a plano convex magnifier lens (Fig. 12) (claim 6);
- Wherein the first and second magnifier lenses (Fig. 9, 916) are arranged substantially orthogonal to the light path of the corresponding first and second light emitting diodes (904) (claim 7);
- Wherein the device (Fig. 8, 901) is a flashlight (claim 8);
- A circuit board (Fig. 9, 919) fixed to the housing, wherein the first and second emitting diodes (904) are connected to the circuit board (919) (claim 9).

8. Claims 10-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Brass et al. (US 6,979,104).

9. Brass et al. disclose a light emitting diode (LED) lighting device (Fig. 8, 901).

10. In regards to claim 10, Brass et al. disclose:

- A housing (Fig. 8, 911, 920);
- A first and second light emitting diodes (Fig. 9, 904) located in the housing (911), wherein the second light emitting diode is spaced from the first light emitting diode;
- A first and second magnifier lenses (Fig. 9, 916) comprising a convex surface (Fig. 12) and arranged in a light path of the first and second light emitting diodes (Fig. 9, 904) respectively for focusing a first (Fig. 18, A) and second (B) light beams onto a target area (col. 4, lines 24-27);
- Wherein the second magnifier lens (Fig. 8) is spaced from the first magnifier lens;

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- A cover (Fig. 9, 913) disposed over a front of the housing (911), wherein the cover supports the first and second lenses (916) relative to the first and second light emitting diodes (904), respectively.

11. In regards to claims 11-16, Brass et al. further disclose:

- Wherein the cover (Fig. 8, 913) comprise a substantially transparent material (col. 3, lines 55-57) (claim 11);
- Wherein the cover (Fig. 8, 913) comprises a non-reflective inner wall (col. 3, lines 55-57) (claim 12);
- Wherein the first and second magnifier lenses (Fig. 9, 916) each comprise a convex magnifier lens (claim 13);
- Wherein the first and second magnifier lenses (Fig. 9, 916) each comprise a plano convex magnifier lens (Fig. 12) (claim 14);
- Wherein the first and second magnifier lenses (Fig. 9, 916) are arranged substantially orthogonal to the light path of the corresponding first and second light emitting diodes (904) (claim 15);
- Wherein the device (Fig. 8, 901) is a flashlight (claim 16).

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sjobom (US 5,515,253), Palmer et al. (US 5,595,435), Lehrer (US 6,290,368), Maas et al. (US 6,402,347), Sommers et al. (US 6,485,160) and

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Fischer et al. (US 6,746,124) show lighting devices having light emitting diodes and lenses.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gunyoung T. Lee whose telephone number is (571) 272-8588. The examiner can normally be reached between 7:30 - 4:00 PM.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra L. O'Shea can be reached at (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GTL  
4/7/2006



JOHN ANTHONY WARD  
PRIMARY EXAMINER